



DATE: [DATE]

Behavioral Health Information Notice No.: ~~24-003~~; 25-XXX
(Supersedes [BHIN 24-003](#))

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
~~California Association of DUI Treatment Programs~~
California Association of DUI Treatment Programs
California Association of Mental Health Peer-Run Organizations
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators
The League of California Cities

SUBJECT: California Plaintiff Subdivision Use of Opioid Settlement Funds
Allocated from the California Subdivision Fund.

PURPOSE: To provide guidance to California's Plaintiff Subdivisions on the allowable use and reporting requirements for settlement funds received from the California Subdivision Fund.

REFERENCE: National Opioid Settlement Agreements and California State-Subdivision Agreements with pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen, opioid manufacturers Teva,

Allergan, Janssen Pharmaceuticals, and Johnson & Johnson, and Teva, pharmacies Walgreens, Walmart, CVS, and CVS-Kroger, and any future similarly structured settlements.

BACKGROUND:

In 2022, California Attorney General Rob Bonta announced the final settlement agreements with prescription opioid manufacturer Janssen Pharmaceuticals and Johnson & Johnson (collectively, Janssen) and pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen (collectively, Distributors). In 2023, Attorney General Bonta announced proposed multistate settlements with opioid manufacturers ~~Teva and Allergan, Teva,~~ and pharmacies Walgreens, Walmart, ~~and CVS (collectively, the Pharmacies),~~ and Kroger. These settlements mark the culmination of years of negotiations to resolve more than 3,000 opioid-related lawsuits and related investigations brought by state and local governments across the country and will provide substantial funds to California for the abatement of the opioid crisis in California. California through substance use prevention, harm reduction, treatment, and its cities and counties stand to receive up to recovery services.

~~\$1.8 billion for substance use prevention, harm reduction, treatment, and recovery from Teva, Allergan and the Pharmacies. This is in addition to the up to \$2.2 billion California is expected to receive from the Janssen and Distributors settlements. Payment timeframes vary by settlement and can last up to 18 years, respectively. California, and counsel representing a group of cities and counties, agreed on a proposed framework for the allowable use of funds and an allocation of funds recoveries that California will receive pursuant to these opioid settlements. A summary of the allowable uses and allocation structure can be found in Table 1.~~

Table 1. California Opioid Settlement Fund Distribution

Fund Type	Recipient(s)	Allowable Uses
CA Abatement Accounts Fund (70%)	CA Participating	Funds must be used for future Opioid Remediation in one or more of the areas <u>listed described in Exhibit E</u> of the

Fund Type	Recipient(s)	Allowable Uses
	Subdivisions ¹	settlement agreements and the National Opioid Settlement Agreements; AND No less than 50% of the funds received in each calendar year will be used for one or more High Impact Abatement Activities. ²
CA Subdivision Fund (15%)	CA Plaintiff Subdivisions ³	Funds must be used towards future opioid remediation and to reimburse past opioid-related expenses, which may include litigation fees and expenses.
California State Fund (15%)	The State of California	Funds must be used for future opioid remediation.

Payments to the State of California (California State Fund), CA Participating Subdivisions (CA Abatement Accounts Fund), and the Plaintiff Subdivisions (CA Subdivision Fund) will be distributed by the ~~Settlement Fund~~ settlement's Directing Administrator, BrownGreer, PLC (BrownGreer).

~~To ensure funds are used for opioid response and remediation efforts,~~ California has named the Department of Health Care Services (DHCS) as the oversight and monitoring entity for opioid settlement funds, pursuant to the California State-Subdivision Agreements and Government Code, Title 2, Division 3, Part 2, Chapter 6, Article 2, Section 12534. All Plaintiff Subdivisions are required to coordinate with the ~~Settlement~~

¹ Cities and Counties that are eligible to receive monies from the CA Abatement Accounts Fund are listed in Appendix 1 of the relevant California State-Subdivision Agreements. Only cities and counties that are CA Participating Subdivisions may receive funds from the CA Abatement Accounts Fund. A city or county's allocated share of the CA Abatement Accounts Fund is listed under Abatement Percentage in Appendix 1.

² DHCS may add HIAA to this list throughout the program period but may not remove from it. When deciding whether and which activities to add to the HIAA list, DHCS will make reasonable efforts to consult with stakeholders, including CA Participating Subdivisions and Plaintiff Subdivisions.

³ Plaintiff Subdivisions are cities and counties that are allocated a share of the CA Subdivision Fund. A Plaintiff Subdivision's allocated share of the CA Subdivision Fund is listed under the Plaintiff Subdivision Percentage of Appendix 1 of the relevant California State-Subdivision Agreements.

~~Fund~~ settlement's Directing Administrator to ensure receipt of the allocated amounts. All Plaintiff Subdivisions are ~~also~~ required to report to DHCS to ensure the opioid settlement funds are expended as required under the National Opioid Settlement Agreements and the California State-Subdivision Agreements, until at least one year after all funds from the settlements are fully expended.⁴

This guidance letter pertains to Plaintiff Subdivisions that are receiving funds from the CA Subdivision Fund ~~through California's Opioid Settlements~~.⁵ Plaintiff Subdivisions are defined as CA Subdivisions located in California that filed a lawsuit, on behalf of the CA Subdivision and/or through an official of the CA Subdivision on behalf of the People of the State of California, against one or more Opioid Defendants prior to October 1, 2020. California's Opioid Settlements refer to opioid settlements with Janssen, Distributors, Teva, Allergan, ~~and the pharmacies CVS, Walgreens, Walmart, and Kroger~~, and any future opioid settlements that follow a similar structure. This guidance does not pertain to funds received from ~~bankruptcy matters such as Mallinckrodt plc settlements in which DHCS has no oversight (e.g., McKinsey) or bankruptcy matters, such as Mallinckrodt plc and Endo Pharmaceuticals, which are addressed through separate guidance on the DHCS California's Opioid Settlements~~ [webpage](#).

Plaintiff Subdivisions should contact their city attorney/county counsel or outside counsel working on their opioid-related matters for additional guidance pertaining to the CA Subdivision Fund.

POLICY

CA SUBDIVISION FUND ALLOWABLE EXPENDITURES

~~Funds received from the opioid settlements, including the CA Subdivision Fund, are intended to be used toward opioid remediation. The National Opioid Settlement Agreements define "opioid remediation" as "care, treatment, and other programs and expenditures designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of,~~

⁴ Resources for Plaintiff Subdivisions can be found on the [California Opioid Settlements](#) webpage.

⁵ If there are any inconsistencies between the National Settlement Agreements and/or CA State-Subdivision Agreements and this policy, the agreements shall govern.

~~including on those injured as a result of, the opioid epidemic".~~ Pursuant to the California State-Subdivision Agreements, allocations from the CA Subdivision Fund shall be used to fund future opioid remediation efforts and to reimburse past opioid-related expenses, which may include fees and expenses related to opioid litigation against one or more Opioid Defendants.

Certain proposed and final California State-Subdivision Agreements further restrict usage of funds received from the CA Subdivision Fund, stipulating that no more than one-third (5% out of the 15% total allotted funds) shall be used for fees and expenses related to opioid litigation.⁶ It is the responsibility of the Plaintiff Subdivision to track the requirements of each settlement and ensure adherence to this 5% maximum restriction and other requirements, where applicable.

Plaintiff Subdivisions may roll over funds from year to year or combine their allocations from multiple opioid settlements to pay for allowable expenditures. While the California State-Subdivision Agreements impose time restrictions on when funds from the CA Abatement Accounts Fund must be expended or encumbered, the agreements do not impose similar time restrictions on funds from the CA Subdivision Fund. Plaintiff Subdivisions that continue to have questions regarding periods of expenditure for funds from the CA Subdivision Fund should contact their city attorney/county counsel or outside counsel working on their opioid-related matters. Further, Plaintiff Subdivisions combining allocations from the CA Subdivision Fund and CA Abatement Accounts Fund must ensure that expenditures are eligible under each respective fund. For instance, Plaintiff Subdivisions may not use funds from the CA Abatement Accounts Fund to pay for past opioid-related expenses or opioid-related litigation-expenses, pursuant to the California State-Subdivision Agreements.

Plaintiff Subdivisions with questions regarding their use of the CA Subdivision Funds for ~~opioid remediation~~ Opioid Remediation activities may contact DHCS for additional guidance. Plaintiff Subdivisions with questions regarding their use of the CA

⁶ This additional restriction applies to California State-Subdivision Agreements for Purdue, Hikma, Amneal, Mylan, Apotex, Indivior, Sun, Alvogen, and Zydus. These settlements are still pending and have not been finalized. This restriction may apply to other future opioid settlement agreements which follow the same structure of those settlements.

Subdivision Fund for litigation expenses should refer to their city attorney/county counsel or outside counsel ~~handling~~working on their opioid-related matters.

Reasonable Administrative Costs

The National Opioid Settlement Agreements allow for reasonable related administrative expenses for ~~opioid remediation~~Opioid Remediation activities as qualifying expenditures for the CA Subdivision Fund. Plaintiff Subdivisions are encouraged to adhere to the policies listed in DHCS' Reasonable Administrative Costs ~~policy~~Policy, which is Enclosure 1 of BHIN ~~24-00225-XXX~~, California Participating Subdivision Use of Opioid Settlement Funds Allocated from the California Abatement Accounts Fund.

OPIOID SETTLEMENT ACCOUNTING

Plaintiff Subdivisions receiving funds from ~~opioid settlements~~the CA Subdivision Fund must track all deposits, reallocations, and expenditures. Each Plaintiff Subdivision is responsible solely for the allocation(s) it receives. A county is not responsible for oversight, reporting, or monitoring of payments received by a city within that county. Unless otherwise exempt, Plaintiff Subdivisions' expenditures and uses of funds from the opioid settlements will be subject to the normal budgetary and expenditure process of the Plaintiff Subdivision. DHCS recommends that Plaintiff Subdivisions follow the Generally Accepted Accounting Principles for accounting methods and practices for allocations received ~~from opioid settlements~~.

Plaintiff Subdivisions may choose to place funds received from the CA Subdivision Fund in an interest-bearing account. Plaintiff Subdivisions that choose to place their allocations in an interest-bearing account must track and report on all interest earned. Plaintiff Subdivisions must apply any earned interest towards eligible future Opioid Remediation activities. Plaintiff Subdivisions are not required to place funds received in an interest-bearing account.

Record Keeping

Pursuant to the California State-Subdivision Agreements, Plaintiff Subdivisions must track all deposits and expenditures related to their activities funded by the CA Subdivision Fund. Plaintiff Subdivisions should maintain books, records, documents, and other relevant evidence, including local accounting procedures and practices, to properly track their activities. Plaintiff Subdivisions should also be able to delineate

monies by fund type (e.g., CA Abatement Accounts Fund vs. CA Subdivision Funds). In addition, Plaintiff Subdivisions should consider tracking outcomes and other evaluation metrics related to activities funded by the settlements as further evidence of their opioid remediation efforts.

Reallocating Funds

While there is no option for Plaintiff Subdivisions to opt out of receiving payments from the CA Subdivision Fund, Plaintiff Subdivisions may reallocate their funds to another Plaintiff Subdivision after receiving payment from the ~~Settlement Fund~~settlement's Directing Administrator. Plaintiff Subdivisions that choose to reallocate their funds must report these reallocations during DHCS reporting periods. Plaintiff Subdivisions that accept reallocated funds must report on the amount received and relevant expenditures during DHCS reporting periods.

OPIOID SETTLEMENT REPORTING

The California State-Subdivision Agreements require that ~~each CA~~ each CA Participating ~~Subdivisions~~Subdivision receiving funds from the settlements prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. This reporting ~~requirement~~ applies to funds received from the CA Subdivision Fund by Plaintiff Subdivisions. Plaintiff Subdivisions must complete reporting with DHCS, certifying that all funds received through the settlements have been used in compliance with the National Opioid Settlement Agreements and the California State-Subdivision Agreements.

DHCS Reporting

DHCS ~~has~~ created an online form to collect reports from Plaintiff Subdivisions regarding the use of settlement funds.⁵ The online form is required to be utilized by Plaintiff Subdivisions ~~by the first reporting date of September 30, 2023,~~ for all applicable settlement funds received in ~~each~~ each State Fiscal Year (SFY) until funds are fully expended and for one year (FY) 2022/23 and ongoing each FY thereafter. Plaintiff Subdivisions are responsible for reporting on ~~opioid remediation~~ activities funded through their opioid settlement allocations, including any ~~opioid remediation~~ activities implemented by subrecipients. Subrecipients ~~may~~ shall not complete or submit reports through the online form. It is the responsibility of the Plaintiff Subdivision to develop a

process for obtaining all information necessary from subrecipients to ~~complete~~comply with their annual reporting requirements.

Documentation required for a Plaintiff Subdivision to complete the DHCS reporting form includes, but is not limited to:

- ~~Allocations~~Payments and expenditures by ~~settlement (e.g., Janssen Settlement or the Distributors Settlement)~~ and the specific fund type (e.g., California Subdivision Fund or the California Abatement Accounts Fund);⁷
- An account of expenditures by program/activity;⁷
- ~~An indication of how each opioid remediation program/activity correlates to the~~ Opioid Remediation areas described as ~~Exhibit E of~~ in the National Opioid Settlement Agreements.
- An account of any interest earned on the settlement fund allocations, if applicable;⁷
- ~~A brief narrative summary to provide background on the purpose of each program/activity;~~
- An account of amounts ~~directly~~ reallocated to, or received from, other Plaintiff Subdivisions, if ~~applicable~~⁶; and applicable.
- An account of non-~~opioid remediation~~Opioid Remediation expenditures;⁷ 7 including how such funds were used.

~~Initial reporting~~Reporting timeframes for Plaintiff Subdivisions are listed in Table 2.

⁷ Non-Opioid Remediation expenses include, but are not limited to, funds used to pay opioid-related attorneys' fees, investigation costs, or litigation costs. Plaintiff Subdivisions who choose to allocate CA Subdivision Fund payments toward non-Opioid Remediation purposes must complete bi-annual reporting with the Directing Administrator describing the use of those funds. Plaintiff Subdivisions can contact the Directing Administrator or visit the National Opioid Settlements webpage for more information on Non-Opioid Remediation Use reporting.

⁸ This table displays initial expected reporting periods and is not an exhaustive list of all reporting periods for settlement funds.

Table 2. Reporting Timeframes for Initial Opioid Settlement Funds⁸

Month/Year	Milestone
September 30, 2023⁹	Expenditure reports for SFY 2022-2023 due
September 30, 2024	Expenditure reports for SFY 2023-2024 due
September 30, 2025	Expenditure reports for SFY 2024-2025 due
September 30, 2026	Expenditure reports for SFY 2025-2026 due
September 30, 2027	Expenditure reports for SFY 2026-2027 due

Upon receiving all reports from Plaintiff Subdivisions for the designated SFY, DHCS will prepare an annual state report regarding the use of the settlement funds, ~~including expenditures from the CA Subdivision Fund~~, until those funds are fully expended and for one year thereafter. This report, and reports submitted to DHCS from Plaintiff Subdivisions, will be made publicly available on the DHCS ~~website~~: California's Opioid Settlements webpage. In each year in which DHCS prepares an annual report, DHCS will also host a meeting to discuss the annual report and the Opioid Remediation activities being carried out by the State and CA Participating Subdivisions.

National Settlement Directing Administrator Reporting

Plaintiff Subdivisions using monies from the CA Subdivision Fund for purposes that do not qualify as Opioid Remediation (as defined in the National Opioid Settlement Agreements) must report these expenses to the relevant defendant and the ~~Settlement Fund~~ Directing Administrator. Non-Opioid Remediation expenses include, but are not limited to, funds used to pay opioid-related attorneys' fees, investigation costs, or litigation costs. Plaintiff Subdivisions who choose to allocate CA Subdivision Fund payments toward non-Opioid Remediation purposes must complete bi-annual reporting with the ~~Settlement Fund~~ Directing Administrator describing the use of those funds. Plaintiff Subdivisions can contact the ~~Settlement Fund~~ Directing Administrator or visit the National Opioid Settlements [webpage](#) for more information on Non-Opioid Remediation Use reporting.

DHCS Report Review

DHCS will review reporting forms submitted by Plaintiff Subdivisions to verify compliance with the National Opioid Settlement Agreements and California State-Subdivision Agreements. DHCS may contact Plaintiff Subdivisions to clarify information

⁹ ~~For the first reporting period covering SFY 2022-2023, DHCS will allow a one-time grace period for expenditure form submissions and will accept submissions until October 31, 2023.~~

provided during annual reporting periods and request corrections to inconsistencies in reporting. Plaintiff Subdivisions instructed to amend their reports will receive technical assistance to ensure proper documentation of their payments and expenditures.

Failure to Report

Plaintiff Subdivisions that do not submit their reports by the prescribed deadlines will receive an electronic notice via email from DHCS regarding the missing report. The electronic notice will be sent to the Plaintiff Subdivision's primary contact(s). It is the responsibility of the Plaintiff Subdivision to ensure their primary ~~contact~~'contacts' information is correctly listed with DHCS.

OPIOID SETTLEMENT TECHNICAL ASSISTANCE

DHCS offers technical assistance and published resources to Plaintiff Subdivisions interested in reviewing ~~opioid remediation eligible~~ Opioid Remediation activities, expense tracking, and reporting requirements. Plaintiff Subdivisions ~~interested in receiving~~ may contact DHCS with questions about best practices for spending funds for future opioid remediation efforts. Plaintiff Subdivisions seeking guidance from DHCS must follow should visit the Resources and Technical Assistance tab on the DHCS Opioid Settlements webpage ~~process listed below to request technical assistance~~. Any guidance provided by DHCS does not indicate approval of expenditures or expense accounting under these settlements.

Requesting Technical Assistance

For questions about using funds received for past opioid remediation or legal fee reimbursements, Plaintiff Subdivisions should ~~first consult with~~ contact their city attorney, /county counsel, ~~and/or outside counsel representing~~ working on their city or county on opioid-related ~~litigation~~ matters.

- ~~1. If questions remain, Plaintiff Subdivisions must review the California Opioid Settlements Allowable Expenditures resource, the Allocating Opioid Settlement Funds: Guiding Principles for Participating Subdivisions resource, and the California Opioid Settlement Funds Frequently Asked Questions (FAQs) QUESTIONS resource prior to submitting a request.⁹~~
- ~~2. Plaintiff Subdivisions interested in receiving technical assistance from~~

DHCS should complete the Opioid Settlement Technical Assistance Form and send their completed form to DHCS at OSF@dhcs.ca.gov.

3. DHCS will confirm receipt of the Technical Assistance Form. If a Plaintiff Subdivision does not receive a confirmation email after three (3) business days, they should follow up with DHCS to ensure the form was received.
4. DHCS will review the Technical Assistance Form and respond to the Plaintiff Subdivision's question(s). If DHCS determines that more information is needed, the Plaintiff Subdivision will receive an email containing clarifying questions and/or a request for a Technical Assistance meeting.
5. The Plaintiff Subdivision must respond to DHCS' question(s) via email. If a Technical Assistance meeting is scheduled, DHCS and the Plaintiff Subdivision will meet and discuss the Plaintiff Subdivision's inquiry. DHCS and the Plaintiff Subdivision will continue to follow up as needed.

QUESTIONS

Information about the use and reporting of opioid settlement funds can be found on the DHCS Opioid Settlements webpage. Questions can be directed to OSF@dhcs.ca.gov.

Information about opioid litigation and settlement participation can be found on the California Attorney General's Opioid Settlements webpage. Questions can be directed to OpioidSettlement-LocalGovernment@doj.ca.gov.

Information about settlement payments can be found on the National Settlement Administrator's settlement's Directing Administrators webpage. Questions can be directed to DirectingAdministrator@NationalOpioidOfficialSettlement.com.

Sincerely,

Original signed by

Marlies Perez, Chief

Community Services Division

Enclosures

1. California Opioid Settlements Glossary – CA Subdivision Fund